

## **REMARKS / ARGUMENTS**

In response to the Final Office Action dated July 17, 2007, Applicant(s) respectfully request reconsideration based on the above claim amendment and the following remarks. Applicant respectfully submits that the claims as presented are in condition for allowance.

### **Status of Claims**

Claims 1 and 5-13 were pending in the application and stand rejected. Claims have been amended. Accordingly, claims 1 and 5-13 remain for consideration upon entry of the present Amendment. Reconsideration of this application is respectfully requested in view of the foregoing claim amendments and the following remarks.

### **Double Patenting Rejections**

Claims 1-13 stand rejected on the ground of nonstatutory double patenting over claims 1-20 of U.S. Patent No. 7,088,987 since the claims, if allowed, would allegedly extend the "right to exclude" already granted in the patent. According to the Examiner, the subject matter claimed in the instant application is fully disclosed in the patent, and the patent and application are claiming common subject matter.

U.S. Patent No. 7,088,987 is assigned to the assignee of the present application and discloses a "Pre-Paid Wireless Interactive Voice Response System with Variable Announcements". The independent claims of U.S. Patent No. 7,088,987 provide, inter alia, for a menu-driven system that responds to information received from a customer by reciting a rate plan that is the current rate plan for the customer and by reciting features for calls made the customer using a wireless device.

Independent claim 1 of the present application (as amended) is not coextensive in scope with the claims of U.S. Patent No. 7,088,987. For example, claim 1 of the present application provides, inter alia, "wherein the wireless communication system is adapted to accept an incoming call from a calling party placed using a predetermined dialed number shorter than seven digits." Claim 1 of the present application also

provides “wherein the SCP commands the Intelligent Peripheral to play one or more of the IVR messages in accordance with a prompt level selection received from a customer of the prepaid customers, the prompt level selection specifying at least one of a message frequency or a message content for the one or more messages, the prompt level selection including at least a first option specifying a maximum number of prompts and a second option specifying a minimum number of prompts; the first option causing the customer to hear a series of announcements every time the customer originates a call, and providing the customer with an option of listening to the series of announcements every time the customer receives an incoming call; the second option causing the customer to hear one or more announcements only if an account balance associated with the customer falls below a predetermined level, wherein the predetermined level is defined with reference to at least one of a monetary amount or an amount of time”.

The foregoing features are not present in any claim of U.S. Patent No. 7,088,987. Moreover, U.S. Patent No. 7,088,987 includes features that are not present in the present pending application. For example, independent claims 1 and 11 of U.S. Patent No. 7,088,987 indicate that a customer is prompted to enter a passcode and the IVR then provides IVR service upon receipt of a valid passcode. Thus, the claims of the present application are not coextensive in scope with the claims of U.S. Patent No. 7,088,987. For this reason, any potential double patenting rejection based upon U.S. Patent No. 7,088,987 would be inappropriate in view of the claim amendments set forth herein. Accordingly, Applicants respectfully request reconsideration and withdrawal of the Examiner’s double patenting rejection, which rejection Applicants consider to be traversed.

#### **Rejections Under 35 U.S.C. §103(a)**

Claims 1 and 5-13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Henderson (U.S. Patent No. 6,327,363), hereinafter “Henderson”, in view of Stevens (U.S. Patent No. 6,404,880), hereinafter “Stevens”.

Regarding claim 1, the Examiner acknowledges that Henderson does not specifically disclose a wireless system providing a mobile switching center and a wireless device for communicating with each other over the air. Accordingly, the Examiner looks to Stevens in an attempt to cure this deficiency.

The foregoing rejection is traversed for the following reasons. Applicants respectfully submit that the obviousness rejection based on Stevens and Henderson is improper as Stevens and Henderson fail to teach or suggest each and every element of the instant invention in such a manner so as to perform as the claimed invention performs. For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a *prima facie* case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). The Examiner must meet the burden of establishing that all elements of the invention are taught or suggested in the prior art. MPEP §2143.03.

Even if the teachings of Stevens and Henderson are combined, the resulting combination fails to meet applicants' claimed invention. Amended claim 1 now recites, *inter alia*:

“[W]herein the SCP commands the Intelligent Peripheral to play one or more of the IVR messages in accordance with a prompt level selection received from a customer of the prepaid customers, the prompt level selection specifying at least one of a message frequency or a message content for the one or more messages, the prompt level selection including at least a first option specifying a maximum number of prompts and a second option specifying a minimum number of prompts;”

“the first option causing the customer to hear a series of announcements when the customer originates a call, and providing the customer with an option of listening to the series of announcements every time the customer receives an incoming call;” and

“the second option causing the customer to hear one or more announcements if an account balance associated with the customer falls below a predetermined level, wherein the predetermined level is defined with reference to at least one of a monetary amount or an amount of time”.

No new matter has been added. Support for the foregoing recitations is found throughout Applicants' specification. For example, refer to page 15, lines 16-18 and page 27, line 11 through page 29, line 4 of the specification.

The techniques disclosed in Henderson differ dramatically from the claimed wireless communication system. With reference to FIG. 7 and col. 11, lines 41-49 of Henderson, IVR menu options include "contacting a service agent, contacting an operator for assistance with the pre-paid card service, updating or recharging their service card account, or terminating the call". Moreover, with reference to FIG. 8 and col. 15, lines 22-26 of Henderson, the illustrated embodiment comprises "six menu options: account information, customer service, operator assistance, terminating number selection, recharge, and exit".

Henderson fails to disclose or suggest Applicants' claimed prompt level selection feature specifying at least one of a message frequency or a message content for the one or more messages, the prompt level selection including at least a first option specifying a maximum number of prompts and a second option specifying a minimum number of prompts. Additionally, Henderson fails to disclose or suggest Applicants' claimed "first option" that causes the customer to hear a series of announcements when the customer originates a call, and providing the customer with an option of listening to the series of announcements when the customer receives an incoming call. Finally, Henderson fails to disclose or suggest Applicants' claimed "second option" that causes the customer to hear one or more announcements if an account balance associated with the customer falls below a predetermined level, wherein the predetermined level is defined with reference to at least one of a monetary amount or an amount of time

Stevens fails to remedy the deficiencies of Henderson. With reference to col. 3, lines 24-47, Stevens provides subscriber alerts to warn subscribers as to severe traffic or weather conditions. The subscriber receives these alerts on a cellular phone, over the public switched telephone network (PSTN), on a pager, or via email. Stevens fails to disclose or suggest Applicants' claimed prompt level selection feature specifying at least one of a message frequency or a message content for the one or more messages, the

prompt level selection including at least a first option specifying a maximum number of prompts and a second option specifying a minimum number of prompts. Additionally, Stevens fails to disclose or suggest Applicants' claimed "first option" that causes the customer to hear a series of announcements when the customer originates a call, and providing the customer with an option of listening to the series of announcements when the customer receives an incoming call. Finally, Stevens fails to disclose or suggest Applicants' claimed "second option" that causes the customer to hear one or more announcements if an account balance associated with the customer falls below a predetermined level, wherein the predetermined level is defined with reference to at least one of a monetary amount or an amount of time. Instead, Stevens discloses delivery of prerecorded alert messages to subscribers over an Interactive Voice Response system (see Stevens, FIG. 4 and col. 10, line 60 to col. 11, line 57).

In view of the foregoing, claim 1 is patentable over Henderson and Stevens. Claims 5-13 depend from claim 1 and include all recitations thereof. Accordingly, it is submitted that claims 5-13 are patentable over Henderson and Stevens for the reasons discussed above in connection with claim 1.

In addition to the foregoing, Applicants find no motivation or suggestion in Henderson to modify the teachings of Stevens to arrive at the claimed arrangement of elements. Likewise, there is no motivation or suggestion in Stevens to modify the teachings of Henderson to arrive at the claimed arrangement of elements. Henderson's network for accepting customer service calls has no relation whatsoever with Stevens' system for issuing traffic and weather alerts.

Applicants submit that Stevens and Henderson fail to teach or suggest each and every element of the claimed invention and are therefore wholly inadequate in their teaching of the claimed invention as a whole, fail to motivate one skilled in the art to do what the patent Applicants has done, fail to recognize a problem recognized and solved only by the present invention, fail to offer any reasonable expectation of success in combining Stevens and Henderson to perform as the claimed invention performs, disclose substantially different inventions from the claimed invention, and therefore cannot

properly be used to establish a prima facie case of obviousness. Accordingly, Applicants respectfully request reconsideration and withdrawal of all rejections under 35 U.S.C. §103(a), which rejections Applicants consider to be traversed.

### CONCLUSION

In light of the foregoing, Applicants respectfully submit that the Examiner's rejections under 35 U.S.C. §103(a), have been traversed, and respectfully requests that the Examiner reconsider and withdraw these rejections.

If a communication with Applicant's Attorneys would assist in advancing this case to allowance, the Examiner is cordially invited to contact the undersigned so that any such issues may be promptly resolved.

The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment, to Deposit Account No. 06-1130. In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above-identified Deposit Account.

Respectfully submitted,  
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